

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS, WESTERN DIVISION

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BERGSTROM, INC.,

Plaintiff,

v.

Case No. 08-CV-50078

GLACIER BAY, INC.,

Defendant.

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**PLAINTIFF'S MOTION FOR AN EXTENSION  
OF THE FACT DISCOVERY CUTOFF DATE**

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Plaintiff Bergstrom, Inc. ("Bergstrom"), by and through its attorneys, Reinhart Boerner Van Deuren s.c., hereby moves the Court, the Honorable Magistrate Judge P. Michael Mahoney presiding, for an order extending the fact discovery cutoff date in the above-captioned action, currently set for May 7, 2010, for a period of sixty (60) days, to July 6, 2010, leaving all other dates and schedules in this action unmodified. The grounds for this Motion are as set forth herein and in the Declaration of Paul J. Stockhausen filed concurrently herewith.

In support of its motion, Bergstrom states as follows:

1. The Court has broad discretion to determine schedules and manage cases before the Court, including setting and modifying deadlines for discovery. *See e.g., Research Sys. Corp. v. IPSOS Publicite*, 276 F.3d 914, 919 (7<sup>th</sup> Cir. 2002) ("[t]he decision concerning whether to grant a continuance is left to the broad discretion of the district court.") *See also, Gonzalez v. Ingersoll Milling Mach.*

*Co.*, 133 F.3d 1025, 1030 (7<sup>th</sup> Cir. 1998) ("District court judges, because of the very nature of the duties and responsibilities accompanying their position, possess great authority to manage their caseload.")

2. The current fact discovery cutoff date set by the Court is May 7, 2010.

3. Due to factors beyond its reasonable control, Bergstrom will be unable to complete necessary fact discovery by May 7, 2010.

4. Since the last status hearing with the Court held on March 2, 2010, the parties have engaged in extensive efforts to complete discovery, including:

a. Glacier Bay produced an additional approximately 120,000 pages of documents to Bergstrom, the latest of which were received on April 20, 2010;

b. Bergstrom produced or is in the process of producing an additional approximately 70,000 pages of documents to Glacier Bay, the latest of which are being produced on or about April 21, 2010;

c. The parties conducted a 30(b)(6) deposition of Plaintiff Bergstrom and depositions of the two inventors on the patents in suit;

d. The parties conducted a third party deposition of Phil Evans, an engineer and former employee of Bergstrom involved with Bergstrom's NITE system prototypes; and

e. The parties have communicated on scheduling additional depositions, including the deposition of Kevin Alston, additional topics for

Bergstrom under 30(b)(6), a deposition of Glacier Bay under 30(b)(6), and several additional Glacier Bay employees and former employees.

5. In spite of these efforts, there remains substantial additional discovery that must be taken, including, without limitation, completing the review and analysis of all the recently produced documents and completing the depositions indicated above.

6. A discovery extension as requested herein will not prejudice Glacier Bay and will have no effect on the overall case schedule. Pursuant to the Court's last scheduling order, expert discovery and dispositive motions will not proceed until the District Court has ruled on claim construction. Given that the District Court has not yet even set a briefing schedule for claim construction, it is highly unlikely that the District Court will render a claim construction decision prior to the proposed new discovery cutoff date of July 6, 2010.

7. In accordance with Local Rule 37.2, counsel for Bergstrom asked in writing for a conference regarding Bergstrom's need for an extension of discovery by email dated April 19, 2010, this after broaching the topic verbally on several occasions. Counsel for Glacier Bay, however, responded by email dated April 19, 2010, that it would not consider such an extension. Counsel for Bergstrom followed up with a further explanation for the need for an extension by email dated April 20, 2010, but counsel for Glacier Bay continued to refuse to consider any discussion of an extension of discovery.

WHEREFORE, Bergstrom respectfully requests that the Court enter an Order extending the fact discovery cutoff currently set for May 7, 2010 for a period of sixty (60) days to July 6, 2010, leaving all other dates and deadlines in the case unchanged.

Dated this 21st day of April, 2010.

s/ Paul J. Stockhausen  
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Attorneys for Plaintiff Bergstrom, Inc.

### **CERTIFICATE OF SERVICE**

I, Paul J. Stockhausen, an attorney of record for Plaintiff Bergstrom, Inc., hereby certify that on April 21, 2010, I caused the foregoing document to be filed with the Clerk of Court using the CM/ECF system, which will send an electronic copy to all counsel of record that have consented to electronic service.

s/ Paul J. Stockhausen

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